

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FREDERICK MICHAEL ZACHARY,

Defendant-Appellant.

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UNPUBLISHED

August 31, 2010

No. 290649

Allegan Circuit Court

LC No. 06-014866-FH

Before: MARKEY, P.J., and ZAHRA and GLEICHER, JJ.

PER CURIAM.

A jury convicted defendant of resisting or obstructing an officer, MCL 750.81d(1), and possession of marijuana, MCL 333.7403(2)(d). The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to 2/1-2 to 15 years in prison for the resisting or obstructing conviction and 222 days for the marijuana possession conviction. Defendant appeals as of right. We affirm.

In August 2006, State Police Trooper Carlos Fossati responded to a 911 call from Tina Plasterer, who had reported defendant's intoxicated and unwelcome presence inside her Pullman residence.<sup>1</sup> Fossati testified that when he arrived, he saw defendant "staggering around in the front yard." Defendant gave Fossati his name and acknowledged his recent eviction from the residence, but insisted that he had come to retrieve some belongings. Plasterer came outside and began approaching defendant while yelling at him, prompting defendant to start yelling back at her. Fossati urged Plasterer to go back inside the house, which she started to do while continuing to argue with defendant. Fossati also twice instructed defendant to move away from the house and stand by a nearby parked car, but defendant did not comply.

Fossati recounted that he decided to secure defendant because he appeared more aggressive than when Fossati had arrived. Fossati asked defendant multiple times to turn around and place his hands behind his back, but defendant ignored Fossati's instructions. When Fossati took defendant's arm to place it behind his back, defendant tried to pull away his arm and body. Defendant said nothing, but continued to resist Fossati's attempt to handcuff him. Fossati

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<sup>1</sup> A court officer related at trial that on August 3, 2006, he served defendant with an eviction order that gave him 48 hours to move from the residence.

eventually got defendant's hands behind his back, walked him over to a parked car, and bent his upper torso over the trunk of a parked car to facilitate Fossati's retrieval of his handcuffs. In Fossati's description, defendant "started to torque around" and tried to talk to Fossati. As Fossati started placing handcuffs on defendant, he began struggling to escape. While Fossati handcuffed defendant, his legs "were flaying [sic] around" and they made contact with Fossati.

Fossati testified that after he handcuffed defendant,<sup>2</sup> he walked defendant to the patrol car. During the walk, defendant yelled and screamed profanities. As Fossati started to put defendant in the car, defendant's "whole body torqued and I seen his hands—his arms come out to the side of his body and then an object leaving his hands going into the bushes." After Fossati placed defendant in the patrol car's backseat, he went to check the bushes and found a cigarette box containing what resembled marijuana. When Fossati returned to the patrol car and began speaking with Plasterer, he noticed defendant "moving around . . . in the back seat . . ." Fossati looked in and saw that defendant had maneuvered his hands partially beneath his body. Fossati directed defendant to put his hands behind his back, defendant replied that he did not have to listen to Fossati, and he refused to comply. Fossati then placed defendant in a "welsh hitch," a piece of equipment that attached to the handcuffs and to defendant's legs, and laid defendant prone in the back seat of the patrol car.

Defendant disputes that the prosecutor presented sufficient evidence to sustain his resisting or obstructing conviction. We review de novo a defendant's challenge to the sufficiency of the evidence. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). We view the evidence in the light most favorable to the prosecution to ascertain whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *Id.* An appellate court must not interfere with the jury's role to determine the weight of the evidence and the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (internal quotation omitted). We must resolve all evidentiary conflicts in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

To establish a resisting or obstructing charge, a prosecutor must prove that (1) the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) the defendant knew or had reason to know that the person the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his duties. MCL 750.81d(1); MCL 750.81d(7)(b). "'Obstruct' includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command." MCL 750.81d(7)(a).

In this case, ample evidence supported defendant's resisting or obstructing conviction. Fossati's testimony established that defendant disobeyed two separate lawful orders: the first to

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<sup>2</sup> Fossati placed the handcuff through a part of a cloth and vinyl cast on one of defendant's arms.

move away from Plasterer, and the second to return defendant's cuffed hands behind his back as he sat inside the patrol car. The jury also could reasonably regard defendant's struggle with Fossati while Fossati handcuffed him as physical force employed to resist Fossati's attempt to restrain defendant. Even were we to agree with defendant's unsupported argument that a conviction under MCL 750.81d(1) should not rest on "passive resistance," this would not benefit defendant; while defendant's initial failure to respond to Fossati's commands might arguably constitute passive resistance, his later actions did not. With respect to defendant's flying legs that made contact with Fossati, Fossati confirmed his belief at trial that defendant had assaulted him. When asked whether Fossati could have mistaken the kicking for defendant flailing to get balance or feel for the ground, Fossati replied, "In this particular incident, no." Defendant denied at trial that he ever intended to resist Fossati, but instead that he merely tried to relieve pressure on his arm. However, Fossati's testimony contradicted defendant's in this regard, as well as defendant's assertion that he did not disobey Fossati's initial order to move toward the car and away from Plasterer.

This case came down to a question of defendant's intent.<sup>3</sup> Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence suffices to establish the element of intent. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). The jury had the prerogative to disbelieve defendant's testimony and to believe Fossati's testimony. *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999). Consequently, we conclude that the prosecutor presented sufficient evidence from which a rational jury could have found beyond a reasonable doubt that defendant resisted or obstructed Fossati, as forbidden in MCL 750.81d(1).

Affirmed.

/s/ Jane E. Markey  
/s/ Brian K. Zahra  
/s/ Elizabeth L. Gleicher

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<sup>3</sup> Defendant conceded at trial his knowledge that Fossati was a police officer that evening.